

Study Em-457

June 16, 2000

Second Supplement to Memorandum 2000-40**Offset of Benefits in Partial Taking in Eminent Domain**

Attached is a letter from Richard B. Williams setting forth his personal views (not those of Caltrans) on the issue of offsetting benefits against damages. Mr. Williams agrees with the staff suggestion that this matter be left to continuing case law development. He also notes, without explanation, that legislation along the lines discussed in Memorandum 2000-40 would “fail to establish complete fairness in the application of the law.”

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

DEPARTMENT OF TRANSPORTATION

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June 13, 2000

VIA FACSIMILE AND FIRST-CLASS MAIL

Nathaniel Sterling, Esq.
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

In re: Study Em-457, Memorandum 2000-40: Offset of Benefits in Partial Taking in Eminent Domain

I am submitting this letter setting forth my personal views as a practicing eminent domain attorney for the State of California, Department of Transportation, in response to Commission Staff Memorandum 2000-40 regarding offset of benefits in partial takings by eminent domain.

I concur with the Law Revision Commission staff's recommendation that the extent of deductibility of benefits from damages to the remainder in partial takings by eminent domain be left to continued case law development. My experience, even under the special benefit rule established in *Beveridge v. Lewis* (1902) 137 Cal. 619, has been that entitlement to an offset for benefits is inherently fact driven, that it is based upon opinion testimony derived from the specific parcel of property and project being considered. Disputes over entitlement to a benefit offset are the type best suited for judicial resolution.

The possible legislation set forth in Memorandum 2000-40 would, as the staff points out, stifle further judicial development of the law. The proposed amendment would also fail to establish complete fairness in the application of the law.

Very truly yours,


RICHARD B. WILLIAMS
Attorney

cc: Michael R. Nave